IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc.Application No. 109 of 2005

Laveen Rana
S/o Shri V.S Rana r/o 266/1
Vijay Colony,Hathibarkala
Police Station Dalanwala,
Dehradun applicant

Versus

1 State of Uttaranchal
2 Chandreshwar Singh
S/o late Raj Narain Singh
R/o 1Aamwala Tarla,
Tapowan Enclave,
Rajpur Road,
Police Station Raipur, Dehradun

Respondents.

Hon'ble B.C.Kandpal, J

This petition under Section 482 Cr.P.C. has been filed by the applicant Laveen Rana for quashing the further proceedings of criminal case No. 142 of 2003 Chandreshwar Singh vs Laveen Rana under Section 138 of Negotiable Instruments Act pending in the court of Judicial Magistrate (CBI)Dehradun.

Brief facts giving rise to this petition are that respondent No.2 Chandreshwar Singh sent a notice to the petitioner on 27.3.2003 through his advocate under Section 138 of Negotiable Instruments Act stating therein that the petitioner had taken a loan of Rs. 20,000/-(Rs. Twenty thousand) from him and when the respondent demanded his money back, the petitioner issued a cheque on 20.11.2002 drawn at Union Bank of India,Thane , Maharastra, when this cheque was sent to the bank, it was dis-honoured. Respondent No.2 again deposited the cheque on the assurance given by the petitioner, in the bank , but

again it was dis-honoured on 24.2.2003. Thereafter respondent 2 issued a notice to the petitioner on 27.3.2003.

Respondent No.2 filed a criminal case against the petitioner on 23.5.2003 and in support of the complaint respondent No.2 also filed his affidavit before the court below by reiterating the averments made in the complaint.

The trial court after considering the facts and circumstances of the case summoned the petitioner vide order dated 9.7.2003.

The petitioner thereafter filed objections before the trial court stating therein that the complaint filed by respondent No.2 is completely time barred.

The objection filed by the petitioner was rejected by the trial court vide order dated 3.8.2004 on the ground that the objection raised by the petitioner was not maintainable as the same can be raised by him at the stage of trial.

The petitioner feeling aggrieved by the aforesaid order, thereafter filed criminal revision before Sessions Judge,Dehradun which was also dismissed by the Learned Sessions Judge vide order dated 11.1.2005.

Feeling aggrieved by the aforesaid impugned order the petitioner has filed this petition for quashing the entire proceedings of the criminal case mentioned above.

The counter and rejoinder affidavits have been exchanged.

I have heard Sh. Ramji Srivastava, learned counsel for the petitioner, learned AGA and perused the record.

The learned counsel for the petitioner has firstly argued that the cheque has been returned as “dis-honoured”to respondent No.2 from the bank on 24.2.2003 but the notice was given on 27.3.2003 therefore the notice is time barred. I failed to appreciate this argument. If the period is calculated from the date of dis-honouring the cheque i.e. 24.2.2003 till the date of issuance of notice i.e. 27.3.2003 then this

period comes to thirty days, therefore, it cannot be said that the notice by respondent no.2 to the petitioner was issued beyond the statutory period. In any case the period comes to thirty days, therefore, the notice is within time.

Learned counsel for the petitioner has further argued that the complaint was filed by respondent No.2 on 23.5.2003 i.e after fifty six days of sending the notice, therefore the complaint is also barred by time.

In order to appreciate these arguments Section 142 of the Negotiable Instruments Act will have to be taken into account.

Section 142 of the Negotiable Instruments Act runs as follows :

a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;
c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

From the perusal of the aforesaid provision it appears that Section 142 (b) is relevant for the purpose of deciding the controversy in this case and in case Section 142 (b) is taken into consideration then it would also be relevant to go through the provision of Section 138 (c) of the Negotiable Instruments Act which runs as follows :

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be , to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Perusal of the aforesaid provision shows that it is quite clear that a complaint for an offence under Section 138 of Negotiable Instruments Act can be filed within a period of one month from the date of cause of action. The cause of action started from the expiry of fifteen days from the date of service of notice to the accused and one month is to be calculated from the date of expiry of fifteen days from the date of service of notice and this one month for filing complaint under Section 138 of Negotiable Instrument Act will be reckoned from the date immediately following the day on which the period of fifteen days from the date of service of notice by drawer expires.

In the instant case it has been specifically mentioned by respondent no.2 in his complaint that statutory notice was sent by him on 27.3.2003 through Registered post as well as through UPC. The petitionr has filed his objection before the court below but nothing could be pointed out by learned counsel for the petitioner that it has been mentioned therein as to when the notice was received by him.

The petitioner in his objection has also not stated anywhere that he in fact did not receive the notice, therefore, this matter is now to be considered by the trial court as to whether and when the notice was received by the petitioner.

I while exercising the inherent powers under Section 482 Cr.P.C. am not supposed to embark upon an enquiry as to the reliability of evidence and sustainability of the accusation on a reasonable appreciation of evidence.

The evidence by the parties is yet to adduced before the court below. Any judgment delivered by me at this stage would amount to a pre-mature decision especially when the evidence is yet to collected before the court below.

The contention with regard to the limitation of the complaint on the basis of the facts mentoned before me relates to the factual aspect of matter which can be assessed and examined by the trial court at the time of trial.I do not find any abuse of process of the court.

The petition under Section 482 Cr.P.C. lacks merit and is liable to be dismissed.

Accordingly the petition is dismissed.

(B.C.Kandpal,J)

1.12.2005

nbj